

LAWRENCE BREWSTER, Regional Solicitor
 MARY K. ALEJANDRO, Deputy Regional Solicitor
 California State Bar Number 243568
 DANIELLE JABERG, Counsel for ERISA
 Office of the Solicitor
 United States Department of Labor
 90 7th Street, Suite 3-700
 San Francisco, California 94103
 Telephone: (415) 625-7760
 Facsimile: (415) 625-7772
 Email: alejandro.mary@dol.gov

Attorneys for Plaintiff, Elaine L.
 Chao, Secretary of Labor, United
 States Department of Labor

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

ELAINE L. CHAO, Secretary of Labor,
 the United States Department of Labor,

Plaintiff,
 vs.

HARMONY SOFTWARE, INC., a
 California corporation, and HARMONY
 SOFTWARE, INC. 401(k) PLAN, an
 employee benefit plan,

Defendants.

Case No. CV 08-5084 JL

SECRETARY'S EX PARTE
 APPLICATION TO RESET INITIAL
 CASE MANAGEMENT CONFERENCE

COMES NOW, Plaintiff Elaine L. Chao, the Secretary of Labor, United States
 Department of Labor, and pursuant to Rules 6(b) and 7(b) of the Fed. R. Civ. P., respectfully
 files this Ex Parte Application to Reset the Initial Case Management Conference scheduled
 for February 11, 2009. As grounds for this Application, Plaintiff states the following:

1. The Plaintiff filed her Complaint in this case on November 7, 2008. Pursuant
 to Fed. R. Civ. P. Rule 4(m), Plaintiff must serve a Summons and a Complaint on each
 Defendant by March 9, 2009.

1 2. On December 9, 2008, the Plaintiff filed an Ex Parte Application for Order to
2 Serve Process on the California Secretary of State.

3 3. The Court has not yet ruled on this Application.

4 4. The Plaintiff still needs to serve Defendants Harmony Software, Inc., and
5 Harmony Software, Inc., 401(k) Plan and she cannot do so until the Court rules on the Ex
6 Parte Application referenced supra.

7 5. No Defendant has yet filed an Answer in this matter and the parties have not
8 been in communication since the Complaint was filed.

9 6. The Court has scheduled an Initial Case Management Conference for
10 February 11, 2009, at 10:30 a.m. The setting of the Initial Case Management Conference
11 presupposes that Plaintiff has served all the named Defendants, that the Defendants have had
12 sufficient time to file their Answers to the Complaint, and that Plaintiff and Defendants have
13 had sufficient time to engage in discussions, conduct a Rule 26(f) conference, and prepare
14 the required Joint Case Management Statement. As a practical matter, the Plaintiff believes
15 that it is highly unlikely that Defendants will file Answers the Complaint.

16 7. As the Defendants have not been served with the Summons, Complaint, or
17 Order Setting Initial Case Management Conference and ADR Deadlines, the Plaintiff
18 respectfully requests this Court reset the Initial Case Management Conference for June 15,
19 2009, or anytime thereafter.

20 8. This resetting will allow sufficient time for the Plaintiff to serve Defendants
21 Harmony Software, Inc., and Harmony Software, Inc., 401(k) Plan with the Summons and
22 Complaint and for them to file their Answers. As stated above, the Plaintiff anticipates that
23 Defendants will not file Answers to the Complaint.

24 //

25 //

 //

WHEREFORE, Plaintiff respectfully requests the Court to Reset the Initial Case
June 17, 2009
Management Conference to ~~June 15, 2009~~, or thereafter.

Respectfully submitted,

GREGORY F. JACOB
Solicitor of Labor

LAWRENCE BREWSTER
Regional Solicitor

DANIELLE JABERG
Counsel for ERISA

By: /s/ Mary K. Alejandro
MARY K. ALEJANDRO
Deputy Regional Solicitor
(415) 625-7760

Attorneys for the Plaintiff